Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

CONSOLIDATED REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

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Summary

In this reply, Paging Network, Inc. ("PageNet") responds to those oppositions to petitions for reconsideration that advocated that: (1) paging carriers are not entitled to reciprocal compensation; (2) paging carriers are not entitled to immediate compensation under the CMRS proxy; (3) paging service is not a telephone exchange service; (4) the Commission should modify the local calling area for CMRS carriers; and (5) wireless carriers are not entitled to benefits of the provisions of Section 224(f)(1).

In their oppositions, the LECs try to defeat a paging carrier's right to reciprocal compensation based upon two general premises. The first is that paging traffic is one-way and is, therefore, not mutual or reciprocal. The second is that the paging network does not provide true end office functions. As demonstrated herein, it is the obligation to pay compensation for traffic termination that is mutual and reciprocal for the purposes of compensation, not traffic flow. PageNet also demonstrates that paging switches do perform end office functions. In addition, paging carriers are entitled to reciprocal compensation because they incur a cost when terminating calling traffic originated on a LEC's network.

In its petition for reconsideration, PageNet requested that the Commission reconsider its decision to delay compensation to paging carriers while adopting a compensation proxy for other

CMRS carriers. This request was opposed by the LECs. The reason paging carriers are entitled to compensation today is that their costs in terminating traffic are the same. In fact, the record in this proceeding regarding cost data is identical across the wireless industry. Therefore, the Commission does not need paging carriers to submit their costs to award them compensation based upon LEC cost proxies. Furthermore, the conclusion that paging carriers alone must do forward-looking cost studies, places traditional paging carriers at a severe disadvantage when compared to carriers offering competing services over their cellular, PCS or SMR networks.

Some of the LECs opposed PageNet's request that the Commission define paging services as a telephone exchange service. PageNet demonstrates that paging services are telephone exchange services, which the Commission has recognized almost since the industry's inception. Because the only reason a LEC would care if paging service is defined as a telephone exchange service is to be able to discriminate against paging carriers in interconnection or numbering, the Commission must recognize that paging is a comparable telephone exchange service within the meaning of Section 3(47), alternatives (A) and (B).

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To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.429(g), hereby submits its consolidated reply to oppositions to petitions for reconsideration and clarification filed in the above-captioned docket.[1] In support of this Reply, the following is respectfully shown:

I. None Of The LECs Have Undermined The Paging Carriers' Statutory Entitlement To Compensation

Of the petitions for reconsideration filed in the above-captioned docket, Kalida Telephone Company ("Kalida") and the Local Exchange Carrier Coalition ("LECC") sought reconsideration of the Commission's decision to require the local exchange

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[1] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *First Report & Order*, released August 8, 1996 ("*First Report*").

carriers ("LECs") to compensate paging carriers for termination of LEC-originated calls. They argue that paging carriers are not entitled to compensation for calling traffic originated on another carrier's network and terminated on the paging carrier's network because paging traffic at present is predominately one-way.

In the oppositions to petitions for reconsideration filed in the above-captioned docket, the Southern New England Telephone Company ("SNET"), US West, Inc. ("US West"), GTE Service Corporation ("GTE"), NYNEX Telephone Companies ("NYNEX"), and Bell Atlantic[2], echo Kalida and LECC, or extend the Kalida and LECC arguments. None of these companies raised the issue of reciprocal compensation for paging carriers in their petitions for reconsideration in this docket. The arguments are not made any more accurate or persuasive just because the LEC community has joined the battle, albeit belatedly. The LEC arguments, both singly and in the aggregate, are nothing more than attempts to continue to skirt their obligation to pay compensation to a subset of the CMRS industry. The LEC arguments are smoke screens, raised to hide the fact that the single reason the LECs oppose paging compensation is that it is the one compensation obligation where the LECs will pay more than they receive. This

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2 SNET Opposition at 15; US West Opposition at 18-19; GTE Opposition at 44-46; NYNEX Opposition at 30-32; and Bell Atlantic Opposition at 11-12.

distaste for payment makes the compensation to paging carriers no less of a statutory obligation.

As with Kalida and LECC, none of the newly complaining LECs challenge the fact that paging carriers incur substantial costs when terminating traffic originated by another carrier, including the LECs. It is this inescapable fact underlying both the statutes and the rules that entitles paging carriers to compensation for terminating calling traffic.

Like Kalida, the LECs attempt definitional games to deprive paging carriers the right to recover their costs. The LECs argue that, because the flow of traffic between the LEC and the paging networks is not "mutual" or "reciprocal," they do not have to pay the paging carriers for terminating calling traffic originated on the LEC networks.[3] However, as demonstrated in PageNet's Comments in Response To Petitions For Reconsideration (at 2-8), the terms "mutual" and "reciprocal," as used by the Commission and the Congress, speak to a mutual obligation to pay co-carriers for call termination. The cost incurred in terminating calling traffic results from the act of terminating traffic and that cost is not contingent upon, diminished or obviated by the one-way or two-way nature of the traffic flow. It is the carrier's obligation to pay compensation to a co-carrier that is mutual or reciprocal, not the flow of traffic, in order to be entitled to

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3 *See, e.g.*, Oppositions of SNET at 15, GTE at 45, Bell Atlantic at 11-12.

compensation. As the Commission found in the *First Report*, CMRS carriers, including paging carriers, are entitled to recover their costs of terminating another carrier's traffic.[4] The fact that traffic flows are only one-way is irrelevant to compensation entitlement.

In the Omnibus Budget Reconciliation Act of 1993,[5] Congress required the Commission to provide for reasonable physical connection to common carrier networks by the CMRS carriers. In implementing the Budget Act, the Commission determined that a requirement of reasonable interconnection for CMRS carriers was "mutual compensation."[6] The Commission codified this requirement of mutual compensation for CMRS carriers under Section 20.11 of the Commission's Rules. Section 20.11(b)(1) provides:

> A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating calling traffic that originates on facilities of the local exchange carriers.[7]

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4 *First Report* at ¶ 1008.

5 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 392 (1993)("Budget Act").

6 *See In re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, ¶¶ 230-234 (1994).

7 47 C.F. R. § 20.11(b)(1). Section 20.11(b)(2) of the Commission's Rules codifies the obligation of CMRS carriers to pay compensation to the LECs for traffic originated on the CMRS carrier's network and terminated on the LEC's network. Sections 20.11(B)(1) and Sections 20.11(b)(2) are not contingent upon each other.

Nowhere in Section 20.11(b)(1) does the Commission make mutual compensation contingent upon traffic flow, as the LECs suggest.

Like Kalida, in its opposition, GTE claims that compensation to paging carriers will produce incentives for irrational economic results. GTE reasons that "paging carriers could give away pagers and simply reap all their compensation from the LEC delivering the pages to the network."[8] GTE's premise simply disregards the costs of paging units to carriers, which may range, depending upon the sophistication of the unit desired by the customer from $60.00 to $150.00 or more. However, it is the proposition GTE expounds that is irrational. A carrier seeking to adopt such a philosophy would immediately fail.

Take, for example, a paging carrier may offer paging service, including equipment rental, for $10 a month, with 50 or 60 pages per month on average. That carrier attempts to earn revenues of between $.166 and $.20 per page. No rational carrier is going to forego that revenue stream in order to reap $.002 to $.004 per page from the LECs. If, for example, LEC proxies are used as a basis for recovery, the $.002 to $.004 of termination compensation would be a very small fraction of the expense associated with terminating over a paging radio frequency network, to say nothing of the costs of the spectrum a company would be occupying for such calls. No carrier would incur the costs of the paging unit or switching, endure the capacity

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[8] GTE Opposition at 46.

constraints, or incur the radio frequency costs for such a, comparatively speaking only, nominal sum.

Lastly, GTE claims that paging carriers are not entitled to compensation because "paging terminals do not perform true end office switching."[9] It is apparent from GTE's antiquated position that GTE still looks at the public switched network as if it were comprised only of landline facilities.[10] But it is not. It is comprised of both wireless and wireline networks. As defined in Notes on the Network, Bell Laboratories, 1977, at 691, paging carriers' wireless networks perform switching functions just as the LECs do in their networks. There, switching is defined as referring to "the process of connecting paths between appropriate lines and trunks to form a communications path between two station sets . . . ." A switching system is defined as an "electromechanical or electronic system for connecting lines to lines, lines to trunks, or trunks to trunks." *Id.*

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9 GTE Opposition at 45.

10 Some of the LECs apparently are under the impression that paging carriers use powerful one-way broadcast transmitters and, therefore, do not have comparable systems with multi-transmitter cellular and PCS systems. The truth is that the effective radiated power limitations for paging and other CMRS stations are generally within an order of magnitude of one another and paging carriers have similar or smaller (20 miles) service areas compared to other CMRS carriers. This means that, like other CMRS carriers, paging carriers employ multiple transmitters even for coverage on a local basis. Regional to nationwide paging systems require dozens to hundreds of transmitters.

In the paging context, paging carriers' switching systems switch traffic. They connect traffic delivered on landline trunks to either additional landline trunks or satellite trunks, and these trunks connect to paging lines (*i.e.*, RF paths). Furthermore, as Comcast and Vanguard recognized in the context of cellular,[11] paging carriers may perform tandem interconnection as direct connections from an IXC and, in these circumstances, are tandem interconnectors as well as end office interconnectors. To recognize that reality, PageNet concurs with Comcast and Vanguard that the compensation should be based on functions, whether tandem or end office.

In response to the arguments that paging switches do not perform as end offices, *e.g.*, providing (i) routing of calls, (ii) physical switching of calls, (iii) facilities-based call completion functions, it must be emphasized that paging switches do perform traditional end office functions. Specifically, calls arriving on a common trunk group are parceled out to the proper paging frequency and thereon delivered using the proper signaling method. This is achieved by the paging network by routing and physical switching of calls to appropriate, usually owned, transport and transmission facilities. In fact, paging switches provide at a minimum the following end office functions: called number validity screening, invalid number announcements,

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11 Joint Opposition of Comcast Cellular Communications, Inc. ("Comcast") and Vanguard Cellular Systems, Inc. ("Vanguard") at 12.

congestion or busy tones, ringing and call progress tones, customer alerting functions, customer commanded call-forwarding and remote call forwarding, and answer supervision in a network compatible form.

II. The Commission Should Provide Paging Carriers With The Same Compensation Proxies As Other CMRS Carriers

In their petitions for reconsideration, PageNet and Airtouch requested that the Commission reconsider its decision not to grant paging carriers immediate termination compensation through the CMRS proxies established for cellular, PCS and SMR. In their oppositions, USTA and Ameritech support the Commission's decision not to award paging carriers immediate termination compensation claiming that more information is needed regarding the cost that paging carriers incur in terminating calling traffic.[12] Ameritech additionally stated that paging carriers had not provided a record for determining the paging compensation rate.[13] The fact of the matter is that paging carriers provide as much information about call termination as the CMRS carriers that are now enjoying a termination rate proxy. There are no cellular, PCS or SMR costs in the record, either on a carrier-specific or industry-specific basis. The record in this proceeding in terms of cost data is identical across the wireless industry. Therefore, what is an achievable and legally sustainable proxy

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12 USTA Opposition at 37-38; Ameritech Opposition at 39-41.

13 Ameritech Opposition at 39.

must be equally valid among these carriers. Furthermore, the Commission does not need paging carriers to submit their costs in the context of this proceeding or any other in order to award them a specific measure of compensation based on LEC cost proxies. It is clearly rational and consistent for the Commission to equate the costs of terminating functions across all carriers and, thus, to conclude that compensation should be the same for those functions.

USTA infers that the sole basis for a paging carrier's desire to use LEC proxies "that bear no relationship to costs" is that it would assist "the one-way paging industry in its efforts to compete with advanced communications services." USTA's premise totally ignores the dispositive evidence that PageNet submitted in this record, showing that paging carriers provide the same termination functions as other CMRS carriers, and thus that the costs and reselling compensation should be comparable.[14]

Furthermore, it places an unreasonable and unreasonably discriminatory burden on the paging carriers and, as such, is arbitrary and capricious. Paging carriers, in fact, are the only subset of the non-incumbent local exchange carrier industry upon whom such a burden is imposed. Even in the incumbent local

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[14] Remember, the paging carriers' facilities used for termination are simply a substitution for facilities for which the LEC is compensated when a call is going to a landline party. The fact that revenues are being generated for LECs by the very existence of the paging industry appears to be lost in the LEC thought process.

exchange carrier ("ILEC") context, the Commission recognized the burden on small ILECs and allowed them to use other LEC's costs as proxies. More recently, in its *Order on Reconsideration* in the pay telephone proceeding,[15] the Commission stated that:

> [I]t would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had any pervious experience with costing systems.

Paging carriers have no more experience with TELRIC studies than independent pay telephone providers and it will be extremely burdensome to impose a costing system on paging carriers. With the proxy already established by the Commission for cellular, PCS and SMR carriers, paging carriers should not have to endure the burden and delay such a costing system would cause.

The conclusion that paging carriers alone are required to do forward-looking cost studies eliminates any incentive of the LECs to negotiate compensation arrangements with the paging carriers pending the FCC's establishment of a proxy, while, at the same time, assuring their PCS, cellular and SMR co-competitors receive compensation for their termination costs. Including compensation for completing ordinary paging traffic on their networks, which is indistinguishable from their termination of two-way traffic. This puts traditional paging carriers at a severe competitive

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15 *In the matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, released November 8, 1996, at ¶ 66.

disadvantage *vis-a-vis* carriers offering competing services over their cellular, PCS or SMR networks.

The paging industry will be substantially harmed if this unreasonably discriminatory treatment is not curtailed. All wireless carriers should immediately be afforded termination compensation.

III. Paging Carriers Should Be Included In The Definition Of Those Carriers Providing Telephone Exchange Service

In its Petition For Limited Reconsideration of the *First Report*, PageNet demonstrated that the Commission erred in not including paging carriers in the definition of carriers providing "telephone exchange service." Oppositions filed by United States Telephone Association ("USTA"), NYNEX and Bell Atlantic argue that the Commission should not place paging within the definition of "telephone exchange service." They argue that paging carriers do not fall within the statutory definition of telephone exchange service because they do not offer service comparable to local, two-way switched voice service.[16] NYNEX also argues that the Commission did not find that paging was comparable to cellular, broadband PCS or SMR service.[17] In addition, NYNEX incredulously claims that paging service providers are excluded from those CMRS providers with whom the LECs must interconnect.[18]

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16 USTA Opposition at 36-37; Bell Atlantic Opposition at 11..

17 NYNEX Opposition at 28.

18 *Id.*

Setting aside for the moment that paging carriers fall squarely within the definition of telephone exchange service provider, the NYNEX opposition really makes the policy case for classifying paging service as a telephone exchange service. There, although paging carriers are co-carriers with the LECs, are telecommunications carriers, and are entitled to reciprocal compensation, because paging service has not been placed within the definition of telephone exchange service, NYNEX represents that the "Commission has excluded paging service providers from those CMRS providers with whom incumbent LECs must interconnect."[19] In fact, the only reason that any LEC would care if paging carriers were treated as providers of some telephone exchange services is because they seek to discriminate against them in interconnection or with regard to the availability of numbering resources.[20] It is just this sort of anticompetitive conduct that the inclusion of paging carriers as "telephone exchange services providers" would at least help lay to rest.

As demonstrated in PageNet's and Airtouch's petitions in this docket, paging services are "telephone exchange services," and provide services comparable to "telephone exchange services,"

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19 *Id.*

20 Entitlement to compensation is not affected regardless of telephone exchange carrier status because that entitlement flows to all "telecommunications providers" offering call termination.

and thus fall within the definition. Furthermore, PageNet and Airtouch demonstrate[21] that the Commission has recognized this fact almost since the industry's inception.

NYNEX and Bell Atlantic conveniently ignore PageNet's and Airtouch's demonstration that paging service is a telephone exchange service. USTA, on the other hand, suggests that the cases applying exchange service definitions are neither controlling nor persuasive, in light of the 1996 Act definition of telephone exchange service. However, USTA, badly misreads the 1996 Act definition. It is far broader, not more narrow, than the previous definition,[22] and thus could not have excluded any carrier that had previously fallen within the definition.

Furthermore, as PageNet noted in its Petition For Limited Reconsideration, the Commission's analysis of Section 3(26) (local exchange carrier) and Section 253(f) (at ¶ 1014 of the *First Report*) supports the premise that all CMRS providers are telephone exchange providers, not just two-way interactive service providers. There, the Commission notes that the 1996 Act's exclusion of CMRS providers from "local exchange carrier" status would not have been necessary if CMRS providers were not providing "telephone exchange service." *Id.* The Commission interprets the statute as suggesting that "some" CMRS providers

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21 PageNet Petition for Limited Reconsideration at 14; Airtouch Petition for Reconsideration at 7-8.

22 *See* PageNet Petition For Limited Reconsideration at 15.

are providing telephone exchange or exchange access, but there is no basis for limiting such interpretation to cellular. If the statute had meant to specifically refer to a class of CMRS provider, such as cellular, it would have done so. For example, as the Commission recognizes, Section 271(c)(1)(A) specifically excludes cellular (by reference to cellular rule sections) from being considered to be LECs for purposes of that section. The statute's reference to "CMRS carriers" should be read to exclude all such carriers from LEC status but, at the same time, to indicate the need for such exclusion in order to avoid a contrary result for all CMRS providers, including paging. For these compelling reasons, the Commission must conclude that paging is a comparable telephone exchange service within the meaning of Section 3(47), alternatives (A) and (B).

IV. The Commission Should Not Modify MTA-Based Local Calling Areas For CMRS Carriers

In oppositions filed in this docket, the LECs argued that the MTA-based maximum local service area size of CMRS carriers' service areas and local interconnection with the LECs should be changed to match the LECs' much smaller exchange-based service area and local calling area.[23] There is absolutely no basis for unreasonably limiting the dimensions of the highly beneficial local service and local calling areas enjoyed by CMRS customers. Further, implementing a tracking system to monitor local and non-

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23 *See e.g.*, Opposition of USTA at 39.

local calls within a wide-area wireless system would be unnecessarily disruptive, anticompetitive and would ultimately increase the cost of the wireless service to subscribers.

V. CMRS Carriers Must Have Nondiscriminatory Access To Poles, Conduits And Rights-Of-Way

In oppositions to petitions for reconsideration filed in this docket, certain utilities argued that wireless carriers should not be given nondiscriminatory access under Section 224(f).[24] It is hard to imagine such a strained interpretation of the plain reading of a statute. As telecommunications carriers, wireless carriers fit squarely within Section 224(f) and are entitled to nondiscriminatory access to poles, ducts, conduits and rights-of-way.[25]

Section 224(f)(1) provides that:

> [A] utility shall provide a cable television system or <u>any telecommunications carrier</u> with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.[26]

Section 224(a)(5) states that, for the purposes of Section 224, the term "telecommunications carrier" shall have the meaning stated in Section 3 of the Act, except the definition should not include ILECs. Section 3(44) of the Act defines a "telecommuni-

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[24] *See, e.g.,* Opposition on Behalf of American Electric Power Service Corporation, *et al.* at 9.

[25] Even the LECs do not claim paging carriers are not telecommunications carriers.

[26] 47 U.S.C. § 224(f)(1) [emphasis added].

cations carrier" as "<u>any provider of telecommunications services</u>." Wireless carriers fit squarely within this definition and, thus, are entitled to nondiscriminatory access under Section 244(f) of the Act.

WHEREFORE, for all of the foregoing reasons, PageNet requests that the Commission adopt an order on reconsideration that answers the concerns of the paging industry as outlined in PageNet's pleadings in this matter.

Respectfully submitted,

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